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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Sixty-first session

SUMMARY RECORD OF THE 1539th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 15 August 2002, at 10 a.m.

Chairman: Mr. PILLAI
(Vice-Chairman)

later: Mr. DIACONU
(Chairman)

CONTENTS

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (continued)

Twelfth to fourteenth periodic reports of New Zealand (continued)

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In the absence of Mr. Diaconu, Mr. Pillai, Vice-Chairman, took the Chair

The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (continued)

Twelfth to fourteenth periodic reports of New Zealand (continued) (CERD/C.362/Add.10; HRI/CORE/1/Add.33/Rev.1)

1. At the invitation of the Chairman, the members of the delegation of New Zealand resumed their places at the Committee table.

2. Mr. CAUGHLEY (New Zealand), replying to Committee members' questions, said that New Zealand welcomed the Committee's interest in its efforts to strengthen and sustain racial harmony. The founding document of New Zealand was the Treaty of Waitangi, and biculturalism flowing from the partnership between the Maori and the Crown was a cornerstone of New Zealand society. That country had also been the destination of people from a number of non-European cultures, many of them Pacific Islanders. New Zealand saw itself, first, as bicultural, and second, as multicultural. A recent speech by the Prime Minister had stressed the importance of valuing, and respecting all the country's communities, and of viewing diversity as a strength.

3. The key to the health of an open participatory democracy was the enjoyment of the fundamental right to debate the issues. Although the Government could not predict the future for any specific group within New Zealand society, it did pay attention to demographic trends in the development of its policies. It remained committed to the values and principles set out in international human rights instruments, to opposing discrimination based on colour, religion, race or ethnic or national origin, and to upholding those principles regardless of the status of any individual.

4. Mr. Diaconu took the Chair.

5. Mr. PAKI (New Zealand) said that the categories referred to in paragraph 9 of the core document (HRI/CORE/1/Add.33/Rev.1), and the accompanying table, were part of an ethnic classification structure that had not changed in the previous decade. The "Asian" category included such ethnic groups as Chinese, Indian, Japanese, Korean, such South-East Asian ethnic groups as Vietnamese, Thai and Filipino, and such South Asian ethnic groups as Bangladeshi, Pakistani, Afghan, Nepalese, and Sri Lankan. The "Pacific Island" category included such ethnic groups as Samoan, Fijian, Solomon Islander, Tuvaluan, Papuan, Hawaiian, Easter Islander, and Australian Aboriginal. The "Other" category included, inter alia, Middle Eastern, Latin American and African, and such ethnicities as American Indian, Inuit and Seychelles Islander.

6. In 1991, about 3.5 per cent of New Zealanders had reported that they had more than one ethnicity; by 2001, that figure had risen to 9 per cent. A natural population increase had played a role in such multiple ethnic identities. There were, of course, many views on what constituted belonging to a particular ethnic group.

7. In general, the Maori were playing a greater role in public life. In recent elections, the number of Maori in Parliament had risen from 16 to 19; that represented 15 per cent of the seats, which roughly corresponded to the proportion of Maori in the population of the country. There were currently two Asian members of Parliament, one of whom was a Muslim. The new executive included 5 Maori and 2 Pacific Islander Members of Parliament. Five were Cabinet Members and two were Parliamentary Under-Secretaries, which represented 25 per cent of the executive: indeed, Maori representation at the Cabinet level confirmed their role and place in New Zealand society.

8. Although legislation provided amply for the use of Maori in official business, only 10 per cent of Maori indicated that they used the language when conducting official business. A growing number of core Government departments were placing emphasis on the use and study of Maori, and the Maori Language Commission had been providing support for Maori language skills programmes. The Government intended to conduct surveys to track the progress of Maori language use in official business. The Government's Maori language policy had four aims: to increase the use of the language in a broader range of situations; to increase the number of people who spoke, understood, read and wrote Maori; to develop more positive attitudes with respect to that language; and to ensure its continued growth. Although it was too soon to speak of a revival, the decline in the use of the Maori language had been halted. The number of Maori speakers had increased from around 129,000 in 1996 to 135,500 in 2001, after a long decline. Furthermore, research had shown that Maori were optimistic about the future of their language and believed that significant gains had been made in the previous five years.

9. There were, in addition, a range of initiatives aimed at increasing the use of other languages in schools, but most had been unsuccessful. Particular efforts were being undertaken to increase the number of teachers of Pacific Islands origin, and to develop related teaching materials. Other programmes sought to help minorities become fluent in English while retaining their ethnic languages. Refugee coordinators were working with refugee communities to set up ethnic centres, and booklets had been issued for refugee parents in such languages as Arabic and Somali. The Office of Ethnic Affairs had identified languages as a priority area, and was endeavouring to develop a coordinated approach to supporting communities, including the establishment of a nationwide telephone service using professional interpreters.

10. Studies had shown that the Maori population was growing both in absolute terms and in proportion to the total population. The number of people who identified themselves as Maori had increased to nearly 15 per cent in 2001. Moreover, as the Maori population had grown, the number of Maori who were unfamiliar with their own tribal roots had diminished. It was now possible to be fully educated in Maori institutions, from pre-school to university.

11. Ms. GWYN (New Zealand) said that, in addition to the Racial Discrimination Act and the Human Rights Act, there were a number of legislative texts containing specific provisions prohibiting racial discrimination. The Employment Relations Act prohibited discrimination in

employment on the grounds of colour, race or ethnic or national origin. The State Sector Act required government departments to carry out equal opportunities programmes to identify and eliminate policies and procedures that tended to cause or to perpetuate inequality in employment of persons or groups of persons.

12. Neither the Human Rights Act nor the Bill of Rights Act had supreme status, and neither could override or limit other legislation. Parliament could enact legislation that was inconsistent with the Human Rights Act but such legislation was subject to a declaration of inconsistency made by the Complaints Review Tribunal or the High Court. In such cases, the executive was required to respond, and to submit its response to Parliament. In addition, the Court of Appeal had indicated that it was willing to make declarations of inconsistency with respect to laws that did not conform to the Bill of Rights Act. Two such decisions had been made. The Bill of Rights Act provided that other legislation should be interpreted in such a way as to be consistent with the rights and freedoms enshrined therein, and that any such inconsistency would be brought to the attention of Parliament. Regulations that were inconsistent with the Bill of Rights Act and the Human Rights Act could be annulled. Furthermore, the courts had indicated that the Human Rights Act and the Bill of Rights Act should be accorded special status.

13. Referring to the Human Rights Amendment Act 2001, she said that the key objective of the amalgamation of the Human Rights Commission and the Office of the Race Relations Conciliator was to promote the development of a robust human rights culture and to encourage positive race relations. Education, advocacy and dispute resolution strategies designed by persons with a wide range of skills and perspectives was considered more beneficial than placing that responsibility on a single individual. Within the new Human Rights Commission, a race and ethnic relations team reported directly to the new Race Relations Commissioner, whose post was a full-time one. The new structure had been designed to ensure a collective, strategic and consistent approach to race relations. The Commissioner was responsible for leading discussions on race relations and for providing advice and leadership; that would include discussions on the Treaty of Waitangi, in particular its human race and race relations dimensions. The merging of those offices had also made for a more effective and comprehensive complaint system and a wider range of available expertise.

14. Work on the Consistency 2000 and Compliance 2001 reports was now complete. The Government had submitted to Parliament the Human Rights Commission report, which had found many inconsistencies with the Human Rights Act throughout national legislation. Under the Compliance 2001 process, government agencies had made considerable efforts to remedy those inconsistencies. The results of the Consistency 2000 and Compliance 2001 processes had been incorporated into the Human Rights Amendment Act 2001. In addition, the Ministry of Justice had led an effort to review all legislation to ensure the legal recognition of same-sex and de facto couples, and to clarify policy regarding same-sex marriage.

15. The national identity of New Zealand had been strongly influenced by the Treaty of Waitangi, which had enabled the establishment of a nationwide Government, had guaranteed Maori chieftainship over their lands, villages and taonga (treasures), and had extended the protection of the State to all the people of New Zealand, including those yet to arrive. It had, in addition, provided the blueprint for positive race relations among the various ethnic groups of that country. The relationship between the Treaty of Waitangi and human rights law, both

domestic and international, would continue to evolve. In that regard, the Human Rights Commission had a new responsibility to promote a better understanding of the human rights dimensions of the Treaty and of its relations to international human rights law.

16. Racial discrimination was prohibited under the Human Rights Act 1993 unless the discriminatory act fell under one of the exemptions to the Act, or was considered to be a justified limitation, but only in relation to government actions. The exemptions to the Human Rights Act were limited and related to the provision of counselling services on personal matters and educational establishments maintained wholly or partly for students of a particular race. The Immigration Act 1987 contained a provision that allowed only for a procedural exemption under the Human Rights Act. Under the New Zealand Bill of Rights Act 1990, a government action that differentiated on the grounds of race but could be justified in a free and democratic society was not regarded as discriminatory within the context of either Acts.

17. With regard to whether blanket exemptions from the Human Rights Act had been narrowed down in the Human Rights Amendment Act 2001, the Government had repealed a number of provisions, including the temporary exemption connected with the new grounds of discrimination, and the exemption relating to immigration. The Human Rights Commission was also prohibited from bringing any action in connection with the Human Rights Act, regulations or policies and the Commission could not join any such action as an intervenor. The only other remaining exemption related to actions of the Government that distinguished between New Zealand citizens and other persons, or between Commonwealth citizens and aliens.

18. Mr. CAUGHLEY (New Zealand) said that, as a direct security response to the events of 11 September 2001, the New Zealand Government adopted a more cautious approach to persons claiming refugee status at the border pending determination of their claims. Among other things it had commissioned an open centre in which refugee-status claimants refused a permit to enter New Zealand could be held pending determination of their claim. Claimants who presented a particular and identified risk to security were held in a remand prison. That had been the case in the past but since 11 September 2001 a larger number of persons had been detained. Claimants whose identity could not be identified at the border, but who did not present a particular or identified risk, were initially held at the open centre and, once their identity had been ascertained, were released, usually within three to five weeks. Claimants with genuine documents, unless identified as presenting a particular or identified risk, continued to be released immediately into the community with a permit. Following a decision by the High Court, the operating instructions had been suspended after 11 September and replaced with an interim instruction pending an appeal to the Court of Appeal. The number of claimants detained in accordance with that instruction was in decline. On 17 June 2002, the Parliament had enacted a regime of conditional release for persons, including refugee-status claimants, whose identity could not be ascertained but who otherwise posed a low risk or had particular needs best met in the community. The Government had an agreement with non-governmental organizations (NGOs) to provide for the accommodation and welfare needs of those claimants.

19. The total number of asylum-seekers who had entered New Zealand since 11 September 2001 was 1,255, including 131 persons rescued by the Norwegian ship Tampa. The majority came from Thailand, Afghanistan, Iran, India, Sri Lanka, China, Zimbabwe, Iraq, Malaysia, Pakistan, Fiji and Bangladesh. The total number of persons claiming

refugee status who had been detained was 222, of whom 162 had been initially detained at the open centre and 29 at a remand prison. The remaining 31 persons had been granted immigration permits at the border. The countries of origin of those detained initially were Iran, Sri Lanka, Iraq, and Kuwait. The 29 persons detained at the remand prison came mainly from India, Iran, Iraq and Nigeria. Of the claimants initially detained at the border, 78 had later been released with a permit and 20 subsequently conditionally released. There were 20 refugee-status claimants from Albania, China, Iran, Iraq, Kuwait, Somalia and Sri Lanka currently in detention at the open centre following the High Court decision. Thirty-one persons claiming refugee status from Algeria, Iran, Iraq, Kuwait, Romania, Sierra Leone, Sri Lanka, Zimbabwe, Eire and Israel had been released at the border with a permit. The largest groups came from Iran, Iraq and Zimbabwe. No persons had so far been conditionally released.

20. The open immigration centre mentioned earlier was operated with a very low level of security. There was no security fencing and residents had keys to their own rooms and were subject to a generally unrestricted leave regime. Subject to some formalities, residents were generally able to receive visitors and come and go from the centre between 9 a.m. and 9 p.m. In certain cases, overnight leave from the centre might also be granted. He explained that "released at the border" in a country like New Zealand, which was surrounded by water, meant either being granted an immigration permit to enter the community, or being released conditionally into the community at the border.

21. Asylum-seekers' rights were guaranteed by a combination of express legal rights in domestic law. For example, district court judges monitored the ongoing detention of refugee-status claimants. After an initial detention period of 28 days, a judge was required to review that person's continued detention every 7 days. Furthermore, unless an immigration officer made a formal application to a judge for continued detention and was able to satisfy the judge that it was necessary, then the claimant had to be released. Refugee-status claimants were given legal aid to assist them in pursuing their claims. There was a right of appeal to the Refugee Status Appeals Authority if a refugee status officer declined a claim at first instance. A judicial review was available in the High Court on any administrative decision, including a final determination of the Refugee Status Appeals Authority that a claimant was not a refugee.

22. No persons had been arrested for being directly or indirectly connected with terrorist groups since 11 September 2001. On another issue, there had been no changes to English language provisions for new migrants during the previous year.

23. Although most forms of female genital mutilation constituted an offence under the general provisions of the criminal law on assault, legislation specifically prohibiting such mutilation had come into force in 1996. Additional provisions also gave protection to children and women who might be forced to submit to the practice outside New Zealand. Any infringements were punishable by imprisonment. So far, no one had been prosecuted. The refugee health programme gave training to service providers to support and assist women who had been circumcised before coming to New Zealand.

24. Mr. PAKI (New Zealand) explained that settlement of historical land claims usually involved three components: an historical account, acknowledgements and an apology; cultural redress; and financial and commercial redress consisting of quantum which could be taken as

cash and/or assets, the aim being to find a fair level of economic redress for land alienation in current terms. The most important factors taken into account by the Crown in determining quantum offers were the amount of land lost through the Crown's treaty breaches, the relevant seriousness of the breaches and the benchmark set by existing settlements for similar grievances. The Crown could not provide redress for a resource it did not own or manage. Settlement redress had to be consistent with existing legal frameworks and should not be used for measures more appropriately dealt with at national level. Historical settlements did not extinguish any rights of a claimant group arising from the Treaty of Waitangi or any of its aboriginal or customary rights. The settlement of historical treaty claims did not limit the current rights and benefits that Maori might be entitled to as New Zealanders. Any settlement negotiated between the claimant's representatives and the Crown did not bind either party until it was embodied in a deed of settlement and ratified by the claimant group, and a suitable government entity that was representative, accountable and transparent had been formed to receive settlement assets as settlement legislation came into force. The Crown would not put into effect a settlement unless it clearly had the support of a sufficient majority of the members of the claimant group. There was no set threshold. It had to be decided during the ratification process. The openness of the process and the adequacy of the communications were just as important as the extent of the participation.

25. The Crown provided settlement redress with the intention of establishing a platform that would enable the claimant group to develop its economic base. In addition to cash, Crown-owned commercial properties were often transferred as settlement. The Maori Land Act 1993 was a code governing the administration, occupation, use and development of Maori land. The overall object was to provide Maori owners with greater opportunities to use and develop their land.

26. It was likely that the main reasons why Maori had raised objections during the consultation process stemmed from their strong opposition to the "Fiscal Envelope" policy, which had been abandoned in 1996, and because they were about to enter into negotiations with the Crown to settle their claims.

27. With regard to the Maori fisheries claims settlement, the Commission had recently finalized a single proposal for allocation and was planning a further consultation with Maori in an attempt to reach an agreement on the proposal. The Commission would then make the necessary amendments before submitting the proposal to the Minister of Fisheries. To ensure that settlement benefited both urban and tribal Maori, the settlement had to be ratified by members of the claimant community and a Government body established to administer the proceeds from the settlement before any assets were transferred. The allocation model developed by the Treaty of Waitangi Fisheries Commission provided for the allocation of pre-settlement fishery assets to traditional tribes once they had met certain requirements in respect of governance and representation of members, including those that lived in urban areas. The model set aside a development fund of $20 million that would be available to all Maori, including urban Maori, to provide funding for fisheries related ventures and education.

28. To help Maori achieve self-sufficiency and economic independence, the Government had established a comprehensive Maori development programme that included capacity building, a Maori business facilitation service, as a result of which 300 new Maori-owned new businesses had already been set up, local-level solutions and direct resourcing.

29. Maori tended to be over-represented in the justice system for numerous reasons, including poverty and social disadvantage, lack of cultural pride and positive cultural identity, problems at home and school, drugs and alcohol abuse, lack of vocational skills, peer group pressure and the presence of multiple risk factors. The Government had put in place a number of strategies and programmes, including a crime reduction programme aimed at reducing family violence and child abuse, sexual violence, serious traffic offending, youth offending and re-offending.

30. There was undoubtedly a relationship between socio-economic factors and mental health problems affecting Maori. In response, the Ministry of Health had developed a Maori mental health strategic framework for the planning and delivery of services for Maori at district level. Maori involvement in planning, developing and delivering those services was being actively encouraged.

31. The social and economic disparities between Maori and non-Maori had certainly narrowed, but the task was not easy. The Government had set in place a strategy for reducing social inequality, improving Maori health, housing, education and employment, and settling treaty claims. The policy focus of the Ministry of Maori Development had been sharpened. As proof of the Government's long-term commitment, the Prime Minister had made a number of visits to Maori communities to gain an insight into the problems they faced.

32. Ms. GWYN (New Zealand) said that the increase in the number of complaints of racial discrimination in New Zealand during the period under review (paragraph 172 of the report) did not necessarily indicate that society had become more racist; the Human Rights Amendment Act had simply streamlined procedures and the emphasis placed on human rights education had alerted more people to the existence of a complaints mechanism. Nor should much be read into the fact that only 25 per cent of complaints had been lodged by persons of Maori descent; complainants were frequently reluctant to reveal their ethnicity, which obviously skewed the statistics somewhat. As to the outcome of complaints of racial discrimination, the majority of cases were settled out of court, through conciliation. The statistics cited in paragraph 174 of the report were the most accurate that could be obtained. "White supremacists" were open to prosecution under the Human Rights Act for the criminal offence of inciting racial disharmony, and they were also civilly liable. In addition, they could be prosecuted for riot, unlawful assembly and disorderly conduct on private premises. Regarding the Attorney-General's role in deciding to institute prosecutions for incitement to racial disharmony, as a general rule such prosecutions provoked widespread public interest and controversy, and it was therefore important to examine all the implications of the case thoroughly before proceeding. A range of pecuniary penalties could be imposed for racially motivated offences, for example a fine of up to $NZ 7,000 for an offence contrary to section 131 of the Human Rights Act (incitement to racial disharmony). The Complaints Review Tribunal had the power to award damages of up to $NZ 200,000. As an example of how a particular case had been dealt with recently, a racially motivated individual who had smashed the windows of a Japanese restaurant had been sentenced

to nine months in prison with a subsequent term of supervision, and had been ordered to pay damages. Where an offence was committed on grounds of race, colour, nationality, religion and other such grounds, such factors were considered aggravating circumstances; they were taken into account at the sentencing stage.

33. Specific prohibitions of the publication of racist material could be found in the Films, Video and Publications Classification Act of 1993 and the Broadcasting Act of 1989.

34. Mr. CAUGHLEY (New Zealand) said that the Government of New Zealand was currently reviewing the possibility of making a declaration under article 14 of the Convention. The Cook Islands were neither a colony, nor a dependent territory, nor a sovereign independent State, but an "associated State" which nevertheless had full control over its own destiny. New Zealand's ratification of the Convention in 1972 extended to the Cook Islands, which had their own national legal capacity to submit reports to the United Nations. The development of a Constitution for Tokelau was still at an embryonic stage, yet he was confident that human rights concepts would be incorporated into whichever constitutional arrangements were adopted. Some work remained to be done to reconcile generally recognized human rights concepts with traditional customs and practices in Tokelau.

35. Ms. GWYN (New Zealand), responding to various questions on employment issues, said that, at the point of migrant selection, the New Zealand Immigration Service (NZIS) provided information to prospective migrants and skilled workers, including a referral service to research, business investment and employment opportunities. Much more extensive assistance was afforded to migrants who were selected for humanitarian reasons, for example refugees and family reunification migrants. NZIS had piloted a number of settlement projects through a variety of community organizations and local authorities. In addition, the Ministry of Social Development had established initiatives at regional level to address the employment needs of refugees and migrants.

36. Among measures to encourage employers to recruit minorities, mention should be made of the Equal Employment Opportunities (EEO) Trust established in 1992 as part of the Government's policy to counter labour market discrimination. The Trust promoted the business benefits to employers of employment equity and implementation of EEO principles. The State Sector Act of 1998 required every employer in the State services to promote equal employment opportunities, including impartial selection procedures. All employers were prohibited from discriminating against employees on grounds of sex, marital status, religious belief, ethical belief, colour, race, ethnic and national origin, disability, age, political opinion, employment and family status, and sexual orientation. Measures taken in good faith for the purposes of advancing disadvantaged groups were not held to be discriminatory.

37. With regard to the interpretation of the terms "equality" and "affirmative action" in New Zealand, the courts had ruled that not all distinctions between individuals and groups of individuals could be considered discriminatory. The Court of Appeal had held, for example, that such distinctions needed to be made if government was to function effectively. To date, however, the courts had not been asked to rule on the distinction between positive and negative discrimination.

38. Mr. PAKI (New Zealand) said that the two chief justices of the Maori Land Court were themselves Maori. Of the other judges in the court, two were Maori and two were non-Maori. All the judges of the Maori Land Court were obliged to be thoroughly conversant with Maori language, customary values and practices, and issues arising from the Treaty of Waitangi. The Committee had asked whether New Zealand law was infused with any elements of customary law. Certain traditional Maori values, standards, principles and norms could indeed be found in statutory law, for example the Resource Management Act, which took account of the concept of kaitiakitanga or exercise of guardianship over natural and physical resources. Persons who exercised discretionary powers under the Act were required to recognize and make allowances for the relationship of Maori with their ancestral lands, water and sites, including sacred sites. In the area of criminal justice, increasing interest had been shown in the concept of restorative justice, whereby persons involved in or connected with an offence decided how to deal with its aftermath and the implications for the future. The New Zealand courts had developed a number of requirements for the recognition of customary law on a par with foreign law, for example the use of appropriately qualified experts. In general, the courts were moving away from the idea that the legal process must necessarily comply with formal court procedures.

39. Of the 314 permanent staff of the Ministry of Maori Development, 201 were of Maori descent. Ninety-eight per cent of all regional staff of the Ministry were Maori. The recommendations of Maori Development Commissions had been transmitted to the Ministry, and had resulted, inter alia, in the establishment of the Maori Business Facilitation Service. Problems encountered during the consultation process under the Resource Management Act included lack of understanding by local government agencies of the principle of partnership embodied in the Treaty of Waitangi, lack of access to adequate financial resources and professional expertise, and difficulties in finding the money, time or staff to devote proper attention to resource management issues. Those problems had been partially resolved through various initiatives sponsored by the Ministry for the Environment, such as funding and support for iwi (tribal) management plans, treaty audits of local authorities' performance, provision of legal guidance and best-practice case studies.

40. Mr. CAUGHLEY (New Zealand) said that the New Zealand Government had no plans to appeal against either of the court rulings referred to in paragraph 14 of the report. Public officials received training on human rights issues, and specifically on matters relating to racial discrimination, through various special programmes run by the State Services Commission and kits issued by the Human Rights Commission. NGOs had been invited to comment on the final draft of the report currently before the Committee. The outcomes of the World Conference against Racism had been publicized in the newsletter and on the web site of the Human Rights Division of the Ministry of Foreign Affairs and Trade, and also in public statements by the then Race Relations Conciliator. Subsequent implementation of the Durban Declaration would be undertaken by the Human Rights Commission. With reference to the apology offered to Chinese immigrants who had been taxed upon entry to New Zealand, discussions were currently under way at community level on further follow-up to the Prime Minister's statement on that issue.

41. Mr. ABOUL-NASR applauded the comprehensiveness of the delegation's replies to members' questions and commended the New Zealand authorities' courage in using the word "apology" in connection with past wrongs. Too much attention had perhaps been focused on the

Maori population at the expense of other minorities. He would be grateful for a statement in writing of the New Zealand Government's position on anti-terrorism measures. Finally, the precise meaning of the expression "the Crown" was unclear and should be explained.

42. The CHAIRMAN, speaking as a member of the Committee, said that the Government of New Zealand should submit reports (or include a chapter in its periodic reports) on the situation in Niue and the Cook Islands and other dependent territories.

43. Mr. HERNDL noted that, in its concluding observations following consideration in 1995 of New Zealand's tenth and eleventh periodic reports (A/50/18, paras. 399-459), the Committee had suggested that the Government should consider undertaking further measures with respect to the implementation of article 4 (b) of the Convention, but that on that subject the current report (para. 143) stated that the comments in New Zealand's previous reports remained applicable. More detailed information should be provided in subsequent periodic reports on the measures taken to implement that article. He noted with great satisfaction that the question of making the declaration under article 14 of the Convention was under consideration.

44. Mr. AMIR said he would welcome further information on the customary law of the Maori and other ethnic groups. He wondered whether a caste system existed among minority groups in New Zealand. Did individuals belonging to castes have difficulties integrating into society?

45. Mr. SHAHI said that the information provided by New Zealand highlighted the exemplary way in which the Convention was being implemented in the State party. In view of the fact that there were over 50 ethnic groups in New Zealand and taking into account immigration from the Pacific Islands and elsewhere, the Government had been right to adopt both a bicultural and a multicultural approach. He had been particularly interested to learn that the Crown had issued an apology to the Maori population for breaches of the Treaty of Waitangi. The apology clearly illustrated the Government's will to promote racial harmony with indigenous populations. He had been interested to note that the Maori people and Pacific Islanders were represented in the New Zealand Parliament and in public services, as one of the best ways to promote racial harmony and to reduce racial discrimination was to empower minority groups.

46. He commended the statement made by the acting Prime Minister of New Zealand in the aftermath of the events of 11 September 2001, urging people not to associate the Muslim community or Afghan refugees with acts of terrorism. It was gratifying that the New Zealand Government had been mindful of the fact that any counter-terrorism measures had to reflect an appropriate balance between the need to take effective measures to combat terrorist acts and the requirement of respect for individual human rights. He hoped that the Government would continue in that vein. Finally, he welcomed the demographic data provided in the report.

47. Mr. de GOUTTES said he had been impressed by the delegation's comprehensive replies. He asked whether any progress had been made since the publication of the report in reviewing the Government's position on the declaration under article 14 of the Convention.

It was unclear whether victims of racial discrimination really had an effective avenue of recourse to the courts given that, according to paragraph 139 of the report, the Attorney-General's consent was required to institute a prosecution under sections 131 and 134 of the Human Rights Act.

48. Mr. CAUGHLEY (New Zealand) said he noted Mr. Aboul-Nasr's concern that the report and the discussion had focused disproportionately on Maori issues. If that was the case, it was only because of time constraints.

49. The issue of Niue and the Cook Islands was a complex one, as the islands were self-governing States in free association with New Zealand. They had full competence for the implementation of their obligations under the international human rights instruments and were therefore responsible for the preparation of the relevant reports. However, New Zealand had, in the past, provided assistance with the reports and would no doubt continue to do so in the future.

50. With regard to the Government's position on the declaration under article 14 of the Convention, he said the issue had been placed higher up on the Government's list of priorities.

51. Mr. PAKI (New Zealand) said that there was no caste system in New Zealand.

52. Ms. GWYN (New Zealand) said that the consent of the Attorney-General was not required for civil action under section 61 of the Human Rights Act 1993, which referred to civil breaches of law and prohibited the promotion of racial disharmony. However, the consent of the Attorney-General was required to institute criminal proceedings under section 131 of the Act, which made it a criminal offence to incite racial disharmony. Information would be provided about specific cases in New Zealand's next periodic report.

53. Mr. THORNBERRY (Country Rapporteur) praised New Zealand for having provided a clear picture of its position in relation to its evolving identity. He had been struck by the modern concept put forward by the delegation of the "multiple identity" of individuals. He congratulated New Zealand for having devised an electoral system that produced a Maori representation in Parliament that was roughly proportionate to their percentage of the population. It was encouraging to learn that ancient languages could be adapted for use in the modern world and that the Maori identity was being strengthened while, at the same time, changing in response to modern conditions.

54. The reporting State had revealed it had a complex system in place to safeguard human rights and an entrenched body of human rights legislation in the common law style. Particular importance was clearly given to openness, transparency, reflection and discussion in the human rights legislative process. He had taken note of the formidable process of human rights auditing.

55. In his view, some of the grounds for discrimination referred to by the delegation did not actually constitute discrimination as defined by the Convention. It was possible that New Zealand was being too hard on itself in relation to its understanding of the limits of affirmative action.

56. He would be interested to learn about the conclusions that were being drawn in relation to group complaints under article 14 of the Convention. He had welcomed the comments provided about the State party's response to the events of 11 September 2001 and the judicial supervision of the refugee system, and had appreciated the clarification that historical settlements did not extinguish the Treaty of Waitangi rights. He had been interested to learn that in the Treaty of Waitangi fisheries settlement, the situation of urban, as well as tribal, Maori had been taken into account.

57. On socio-economic disparities, he said the delegation had showed cautious optimism, highlighting the importance of partnership between the Maori and the Government. He had welcomed the sensitive response to the Tokelau case and had taken note of the comments on Niue and the Cook Islands. It would be interesting to learn more about the concept of restorative justice in relation to the Maori population and about the emergence of a common jurisprudence, which, in intercultural terms, would be of great significance. He praised New Zealand for its achievements in blending its peoples with respect for their traditions and for reflecting history while showing sensitivity towards new questions as they arose.

58. The CHAIRMAN thanked the delegation for having provided such comprehensive and interesting replies to the questions put by the Committee.

The meeting rose at 12.50 p.m.